

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LARRY TINSLEY HUDSON,

Defendant-Appellee.

UNPUBLISHED

April 23, 2013

No. 309070

Oakland Circuit Court

LC No. 2011-236716-FH

Before: MARKEY, P.J., and TALBOT and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted from a circuit court order denying its post-sentencing motion for restitution. We reverse and remand for entry of an order of restitution.

Defendant pled no contest to first-degree fleeing or eluding a police officer, MCL 257.602a(5), driving while license suspended causing death, MCL 257.904(4), and larceny under \$200, MCL 750.356(5). On July 5, 2011, the trial court sentenced defendant pursuant to a *Cobbs*¹ sentence agreement whereby defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 50 to 240 months each for the fleeing or eluding and driving while license suspended causing death convictions, and 90 days for the larceny conviction. Restitution was not mentioned at sentencing.² On September 16, 2011, the prosecution filed a “motion for restitution” in which it requested an award of restitution for the damage caused to a home that was struck by defendant’s fleeing vehicle during the offense. The trial court denied the motion because restitution had not been requested at the time of sentencing.

Whether the trial court correctly denied the prosecution’s motion for restitution because restitution was not requested at sentencing involves the interpretation and application of the Crime Victims Rights Act (CVRA), MCL 780.751 *et seq.*, and court rules. This Court reviews

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

² The court entered an amended judgment of sentence on August 16, 2011, to correctly reflect that defendant had pled nolo contendere rather than guilty.

de novo the interpretation and application of statutes and court rules. *People v Lee*, 489 Mich 289, 295; 803 NW2d 165 (2011).

Crime victims have a constitutional and statutory right to restitution. Const 1963, art 1, § 24; MCL 780.766(2); MCL 769.1a(2). MCL 780.766(2) states:

Except as provided in subsection (8)^[3], when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

MCL 769.1a(2) similarly states:

Except as provided in subsection (8)^[3], when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

“A trial court does not have discretion to order a convicted defendant to pay restitution; it must order the defendant to pay restitution and the amount must fully compensate the defendant's victims.” *People v Allen*, 295 Mich App 277, 281; 813 NW2d 806 (2011).

Here, the trial court denied the prosecution's post-sentencing motion for restitution because restitution was not requested at sentencing. But the prosecution's motion was a request that the court modify defendant's sentences relative to restitution. MCR 6.429(A) states:

A motion to correct an invalid sentence may be filed by either party. The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law.

The prosecution's motion and supporting materials showed that defendant's sentences were invalid because they did not comply with the mandate of the CVRA. The motion was timely filed. Where a defendant has entered a plea, a prosecutor may move to correct an invalid sentence within six months after entry of the judgment of conviction and sentence. *Lee*, 489 Mich at 299, citing MCR 6.429(B)(3).

The prosecution correctly argues that the fact that restitution was not mentioned at the plea hearing is of no consequence. “Because restitution is now mandatory, it is no longer open to negotiation during the plea-bargaining or sentence-bargaining process, and defendants are on

³ Subsection (8) in each statute concerns restitution where the victim receives compensation from other sources.

notice that restitution will be part of their sentences.” *People v Ronowski*, 222 Mich App 58, 61; 564 NW2d 466 (1997).

Accordingly, the trial court erred in denying the prosecution’s motion for restitution on the basis that restitution was not requested at sentencing reverse the trial; consequently, we reverse the court’s order denying restitution and remand for entry of an order of restitution.⁴

We reverse and remand for entry of judgment of restitution. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Pat M. Donofrio

⁴ Although defendant’s brief includes a one-sentence assertion that this Court lacks jurisdiction over this appeal for the reasons stated in defendant’s counter-statement of jurisdiction, defendant’s brief does not contain a counter-statement of jurisdiction. We note that defendant’s answer to the prosecution’s delayed application for leave to appeal contained a challenge to this Court’s jurisdiction on the basis that the six-month period for filing a delayed application had expired. See MCR 7.205(F)(3)(b). However, defendant’s challenge was based on a misunderstanding of the applicable dates. The delayed application was filed from the October 5, 2011, order denying restitution, and it was filed within six months of the entry of that order. Accordingly, the delayed application was timely filed and this Court has jurisdiction over this appeal.